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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL LOPEZ,

Defendant and Appellant.

G043426

(Super. Ct. Nos. 02CF0395 &
M-13002)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Gabriel Lopez, in pro. per.; and Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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As set out in defendant Gabriel Lopez's petition for writ of error coram nobis, in February 2002 police pulled over the van defendant was driving. Defendant was driving with a suspended license and when the van was searched police found cocaine. During the stop, an officer answered defendant's cell phone and spoke to someone who "ask[ed] for drugs." Defendant was charged with possession of cocaine base for sale (Health & Saf. Code, § 11351.5), transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)), and driving with a suspended license with two convictions for the same offense (Veh. Code, §§ 14601, subd. (a), 14601.1, subd. (b)(2)). He pleaded guilty to all counts and was given three years' probation, conditioned on serving 120 days in jail.

In February 2010 defendant filed a petition for writ of error coram nobis, to withdraw his guilty plea and vacate the judgment. He asserted his lawyer misrepresented the charges and potential penalties, and, with defendant's interpreter, coerced him into pleading guilty. The court denied the petition, relying on four grounds, any one of which would have been sufficient, as set forth below.

After defendant appealed we appointed counsel to represent him. She filed a brief setting forth the facts of the case and the disposition. She did not argue against defendant but advised the court she had not found any issues to present on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) She pointed to the four grounds on which the trial court relied to deny the petition as issues we might examine.

Defendant was given 30 days to file written argument on his own behalf, which he did, primarily reiterating the points raised in support of his petition. We examined the entire record to determine if any arguable issues were present, including those suggested by counsel and defendant, and found none. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111-112.)

A writ of error coram nobis is available only when a defendant has no other remedies at law. (*People v. Kim* (2009) 45 Cal.4th 1078, 1093-1094.) The petition does

not include an explanation of why defendant failed to avail himself of those remedies, including a motion to withdraw the plea, direct appeal, or petition for writ of habeas corpus. Likewise, defendant had the burden to show diligence in filing the petition. (*Id.* at p. 1095.) He did not explain a delay of eight years.

To prevail on the petition defendant had to show three things: 1) The existence of a fact that, through no fault of defendant, was not introduced at trial and, had it been, would have resulted in a judgment in defendant's favor; 2) the fact ""does not go to the merits""; 3) defendant could not reasonably have discovered the fact before he filed the petition. (*People v. Kim, supra*, 45 Cal.4th at p. 1093.) Defendant did not satisfy these requirements.

A petition for writ of error coram nobis is not a remedy for a claim of ineffective assistance of counsel. (*People v. Kim, supra*, 45 Cal.4th at p. 1104.)

The judgment is affirmed.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

FYBEL, J.